

11.8.1 General

The Planning Commission may modify, reduce or waive those standards and minimum requirements established by this Land Development Code which cannot be modified through a dimensional variance. Use, conditional use, density and FAR standards established in Chapter 2 shall not be modified by this process. Specific Chapter, Part or Section waiver procedures shall take precedence over the procedures established in this Part (e.g. – Parking Waiver procedure in Chapter 9). In conjunction with its review of development proposals that require Conditional Use Permits or Variances, the Board of Zoning Adjustment is authorized to modify, reduce or waive standards and minimum requirements of this Land Development Code in accordance with this part; however the Board is not authorized to grant parking waivers as defined in Section 9.1.16. Only site, building and structure design elements are subject to the waiver provisions of the LDC. Regulations that prohibit certain structures or activities (e.g. freestanding signs prohibited in certain form districts), and other non-design related standards (e.g. limit on hours of operation) may not be waived. (see appendix 11A). Standards based on public health and safety concerns may not be waived. Appendix 11A contains a current listing of items that have been determined to be variable or waivable. This listing shall be updated periodically by Planning and Design Services as determinations are made.

For example, pursuant to LDC Section 4.4.5.H, a home occupation that accommodates customers, clients, or pupils on the site is not permitted to operate between the hours of 9 P.M. and 7 A.M. This standard is not related to design and, therefore, is not subject to a waiver. Planning and Design Services may provide a list of items that are eligible or ineligible for a waiver, said list may be modified by staff as interpretations are made

11.8.2 Application**A. Submission Requirements**

Applications for waiver shall be signed by the property owner or his/her agent and filed with the Planning Director in accordance with these regulations and the Planning Commission By-Laws and Rules of Procedure. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of the Commission. Failure to submit all required material may result in delay of the application review. At a minimum, the following materials shall be submitted with all applications for waiver:

1. A justification document which addresses as applicable the following items:
 - a. How the proposed waiver conforms to the Comprehensive Plan and the intent of this Land Development Code;
 - b. Why compliance with the regulation is not appropriate and granting of the waiver will result in a development more in keeping with the Comprehensive Plan and this overall intent of this Land Development Code;
 - c. What impacts granting of the waiver may have on adjacent property owners;
 - d. Why strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant..
2. Unless determined by the Planning Director to be unnecessary, a general or detailed development plan of sufficient detail to

demonstrate to the Planning Commission the character and objectives of the proposed waiver and the potential impacts of the waiver on the community and its environs.

11.8.3 Notice

Following receipt of a completed application, staff of the Commission shall provide notice of the request for modification or waiver to first tier adjacent property owners and parties of record to any previous Planning Commission hearing on the proposal now under consideration for waiver or modification. Such notice shall be given no less than ten (10) calendar days prior to the meeting at which the request is to be considered.

11.8.4 Public Hearing

The Planning Commission may conduct a public hearing, if it determines that a proposed modification or waiver merits that level of public review. Notice of any such hearing shall be given in accordance with Section 11.8.3.

11.8.5 Findings Necessary for Granting of Waiver or Modification

The Planning Commission may approve waivers or modifications of standards upon a finding that::

- A. The waiver will not adversely affect adjacent property owners; and,
- B. The waiver will not violate the Comprehensive Plan; and,
- C. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant; and,
- D. Either:
 - 1. The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); or
 - 2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

11.8.6 Additional Conditions

The Commission may impose additional conditions or restrictions intended to mitigate the impact of the modification or waiver. These conditions or restrictions shall be considered as binding elements.

11.8.7 Delegation to Committee

The Planning Commission may delegate the authority to consider and take final actions on modifications or waivers to its Land Development and Transportation Committee or other such Committee of the Commission duly created under the By-Laws of the Commission. Committee decisions may be appealed to the Commission in accordance with Section 11.7.2.